

SENATE BILL NO. 129

INTRODUCED BY G. HERTZ, M. BLASDEL, J. ELLSWORTH, S. FITZPATRICK, B. MOLNAR, M. SWEENEY,
F. ANDERSON, D. BARTEL, E. BUTTREY, D. LOGE, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL REGULATORY ENFORCEMENT LAWS TO PROHIBIT THE DEPARTMENT FROM ISSUING CERTAIN CITATIONS BASED ON CONTRIVED EVENTS; ALLOWING THE DEPARTMENT TO ISSUE CITATIONS BASED ON A CONTRIVED EVENT ONLY AFTER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 16-4-406, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-4-406, MCA, is amended to read:

"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating circumstances -- contrived events. (1) The department shall, upon a written, verified complaint of a person, request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, domestic distillery, table wine distributor, beer or wine importer, retailer, concessionaire, or any other person or business licensed or registered under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after reviewing admissions of either the licensee or concessionaire or receiving the results of the department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that a licensee or concessionaire has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

- (a) reprimand a licensee or concessionaire or both;
- (b) proceed to revoke the license of the licensee or the concession agreement of the concessionaire or both;
- (c) suspend the license or the concession agreement or both for a period of not more than 3 months;
- (d) refuse to grant a renewal of the license or concession agreement or both after its expiration; or
- (e) impose a civil penalty not to exceed \$1,500.

1 (3) The department shall consider mitigating circumstances and may adjust penalties within penalty
2 ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

3 (a) there have been no violations by the licensee or concessionaire or both within the past 3 years;

4 (b) there have been good faith efforts by the licensee or concessionaire or both to prevent a violation;

5 (c) written policies exist that govern the conduct of the licensee's employees or the concessionaire's
6 employees or both;

7 (d) there has been cooperation in the investigation of the violation that shows that the licensee or
8 concessionaire or both or an employee or agent of the licensee or concessionaire or both accepts
9 responsibility; or

10 (e) ~~the investigation was not based on complaints received or on observed misconduct, but was~~
11 ~~based solely on the investigating authority creating the opportunity for a violation; or~~

12 (f) ~~the licensee or concessionaire or both have provided responsible alcohol server training to all of~~
13 ~~their employees.~~

14 (4) The department shall consider aggravating circumstances and may adjust penalties within penalty
15 ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:

16 (a) prior warnings about compliance problems;

17 (b) prior violations within the past 3 years;

18 (c) lack of written policies governing employee conduct;

19 (d) multiple violations during the course of the investigation;

20 (e) efforts to conceal a violation;

21 (f) the intentional nature of the violation; or

22 (g) involvement of more than one patron or employee in a violation.

23 (5) The department may not issue a violation to a licensee or a concessionaire provided the
24 investigation was not based on complaints or on observed misconduct, but was based solely on a contrived
25 event by the investigating authority or another designated organization creating the opportunity for a violation.
26 The department may issue a violation only if the licensee or concessionaire fails more than two contrived event
27 investigations within a 3-year period beginning with the first failure. For purposes of this section, the first two
28 violations resulting from a contrived event investigation within a 3-year period do not constitute a violation of

1 this code, and the department may not consider these violations in considering any mitigating circumstances
2 and penalties as provided in this section."

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